

**PT 04-41**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	
	)	<b>Docket No. 03-PT-0025</b>
<b>v.</b>	)	
	)	<b>Tax Year 2002</b>
<b>PRAIRIE PARTNERS, INC.</b>	)	
	)	<b>Dept. Docket No. 02-65-8</b>
<b>Applicant</b>	)	<b>through 02-65-23</b>

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Jim Moody of Cavanagh & O'Hara for Prairie Partners, Inc.

Synopsis:

Prairie Partners, Inc. ("applicant") applied for a 2002 tax exemption for 16 parcels of property located in Menard County. The Department of Revenue ("Department") issued a decision denying the exemptions, and the applicant timely protested the Department's decision. The applicant is a general partner with a .01% interest in Prairie Housing Limited Partnership, which is the owner of the property. The applicant contends that the property qualifies for an exemption on the basis that it is owned by a charitable

organization and used for charitable purposes. After reviewing the record, it is recommended that the exemption be denied.

FINDINGS OF FACT:

1. The Menard County Housing Authority (“housing authority”) planned to develop a housing project in Menard County, Illinois. (Dept. Ex. #1, p. 17)

2. On September 7, 2000, the housing authority created Central Illinois Services (NFP) (“CIS”), which is a not-for-profit organization. CIS was created as a funding mechanism to develop the housing project, which consists of homes for low-income families. (App. Ex. #1; Tr. pp. 9, 14)

3. The Board of Directors of CIS is selected from the current Board of Commissioners and Executive Director of the housing authority. (Applicant’s Ex. #1; Tr. p. 9)

4. Section 2.1 of CIS’s by-laws provides as follows: “Purpose. The purposes for which the corporation is organized are exclusively for charitable, educational, religious or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.” (Applicant’s Ex. #1)

5. CIS is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. (Applicant’s Ex. #2)

6. It was necessary for the housing authority to organize CIS as a 501(c)(3) corporation in order to receive additional federal and state funding. The funding was necessary to finance the housing project, which is called Prairie Place. The Prairie Place project consists of 20 single-family homes for people with low income. (Tr. pp. 10-13)

7. In order to provide tax benefits to investors and financing for the Prairie Place project, the housing authority developed the housing project through a limited partnership. The housing authority planned to have an affiliate of the housing authority serve as the general partner and a tax credit investor would invest as a limited partner. (Dept. Ex. #1, p. 17; Tr. pp. 14-15)

8. CIS created the applicant in order for the applicant to be the general partner in the limited partnership. The applicant is an Illinois not-for-profit corporation that was incorporated on April 6, 2001. (Dept. Ex. #1; Tr. p. 16)

9. CIS is the sole member of the applicant. The applicant's by-laws provide that there shall be no other members except by a vote of CIS. (Dept. Ex. #1)

10. Section 1.2 of the applicant's by-laws provides as follows: "Purpose. The corporation is organized exclusively for the purpose of providing residential facilities and related services to low and moderate income people, to promote community development through planning and conducting neighborhood housing revitalization programs and projects." (Dept. Ex. #1)

11. On April 30, 2001, Prairie Housing Limited Partnership ("Prairie Housing LP") was organized as an Illinois limited partnership. (Dept. Ex. #1)

12. The applicant is the general partner in Prairie Housing LP with a .01 percent interest. ESIC has a 99.99 percent interest.<sup>1</sup> (Tr. p. 16)

13. The sole purpose for organizing Prairie Housing LP was to operate residential low-income housing in order to obtain low-income housing tax credits. (Tr. p. 18)

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<sup>1</sup> The applicant did not provide any explanation regarding ESIC. When questioned about ESIC, the applicant's witness stated that she did not know what type of organization it was. She said she only knew that it was an investor. (Tr. p. 28)

14. The Board members and officers of CIS are the same for the applicant and Prairie Housing LP. (Tr. pp. 14-15, 17-18)

15. The housing authority conveyed 16 parcels of property in Menard County to Prairie Housing LP to be used for the Prairie Place project. These are the parcels for which the applicant seeks an exemption. (Dept. Ex. #1-16; Tr. pp. 16-17)

16. The housing authority is the managing agent for Prairie Place. Potential residents at Prairie Place must file an application with the housing authority. (Tr. pp. 17, 19)

17. Residents at Prairie Place must earn less than 60% of the area median income. The rent is based on income levels and ranges from \$350 to \$550. (Dept. Ex. #1; Tr. pp. 19-20)

#### CONCLUSIONS OF LAW:

The provision of the Property Tax Code ("Code") (35 ILCS 200/1-1 *et seq.*) that allows exemptions for charitable purposes provides in relevant part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity. \* \* \*

(c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended. \* \* \*

Property otherwise qualifying for an exemption under this Section shall not lose its exemption because the legal title is held \* \* \* (ii) by an entity that is organized as a partnership, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner, for the purposes of owning and operating a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986. 35 ILCS 200/15-65.

The applicant contends that the property is exempt under subsection (c) of this provision because CIS is exempt under section 501(c)(3) and the fees are reduced based on an individual's ability to pay. The applicant states that there was testimony indicating that the rent is based on the individual's income level. The applicant asserts that the rent reductions are authorized by section 1.2 of the applicant's by-laws, which provides the purpose for which the applicant was organized. The applicant concludes that CIS and its subsidiary (the applicant) meet the statutory requirements for the exemption.

The applicant notes that the fact that Prairie Housing LP holds the legal title to the property does not prevent the applicant from receiving the exemption. The applicant refers to the last paragraph of section 15-65 of the Code, which indicates that the property shall not lose its exemption if legal title is held by an entity such as Prairie Housing LP. The applicant maintains that under this provision, CIS is the charitable organization whose affiliate or subsidiary is a general partner in the limited partnership. Furthermore, the sole purpose of the limited partnership is to own and operate residential rental property that has received tax credits.

Finally, the applicant states that under an agreement with the limited partnership, the property will revert back to the housing authority after 15 years. (Tr. p. 34) The applicant argues that this means that the housing authority has a reversionary interest in

the property. The applicant contends that the property therefore qualifies for an exemption under section 15-95, which provides an exemption for property owned by a housing authority.

The Department contends that the property does not qualify under subsection (c) because the applicant is not an old people's home, developmental disability home or not-for-profit facility providing services or facilities related to the goals of educational, social and physical development. The Department argues that public housing does not fall under these categories. The Department asserts that the organizations under subsection (c) target the elderly, disabled, or those who need more specific developmental assistance than a general residence.

In addition, the Department states that section 15-65 allows the exemption only if the property is not leased or otherwise used with a view to profit. The Department claims that the rent is based upon the size of the home. If the rent is subsidized, then the applicant receives market rental income for the property. The Department asserts that leasing a home at market rates, with no evidence of a policy of waiving rent for people who cannot pay, does not warrant a charitable exemption.

The Department also argues that the last paragraph of section 15-65 does not apply because the property does not "otherwise" qualify for an exemption under section 15-65. See 35 ILCS 200/15-65. The Department suggests that the applicant is requesting a "crossover" exemption, which is one that is authorized partly by one exemption and partly by another. The Department notes that property owned by the housing authority and used for low rent housing would qualify under section 15-95 of the Code. The

Department maintains, however, that section 15-65 is a separate exemption, and the property at issue in this case does not qualify for the charitable exemption.

Finally, the Department argues that the applicant is not the owner of the property and therefore should not have applied for the exemption. The applicant has a .01% interest in the limited partnership, which is the owner of the property. The Department contends that the applicant's interest in the property is not sufficient to allow it to apply for the exemption.

In response, the applicant contends that it is not attempting to create a crossover exemption. The applicant states that the housing authority is not the owner of the property and is not the party requesting the exemption. The applicant argues that it is a wholly-owned subsidiary of a charitable organization, CIS, and this entitles it to the exemption.

The applicant also maintains that the Prairie Place project promotes the goal of social development, so it falls within the categories listed under subsection (c). The applicant argues that except for the low income housing tax credits, the property would qualify under section 15-65 because CIS is a charitable organization whose sole purpose is to provide low income housing. The applicant believes that the fact that rent is charged does not change the character of the property. The applicant states that the Department has admitted that the applicant is a partial owner of the property. The applicant claims that it therefore has standing to apply for the exemption.

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263, 271 (1996). The party claiming the exemption has the burden of proving by

clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill.App.3d 225, 231 (2<sup>nd</sup> Dist. 1992).

Even if it is assumed that the applicant's .01% interest in the partnership is sufficient to allow it to have standing to apply for the exemption, the applicant has not met its burden of presenting clear and convincing evidence that it is entitled to the exemption. If it is assumed, for argument purposes, that CIS is the type of organization that is referred to in subsection (c), it fails to meet the other criteria listed in that paragraph. To qualify under subsection (c), the organization must be exempt under section 501(c)(3) of the Internal Revenue Code **and** either: (i) its bylaws must provide for a waiver or reduction of fees based on an individual's ability to pay, or (ii) the organization must be qualified, built or financed under Section 202 of the National Housing Act. CIS is exempt under section 501(c)(3), but its bylaws do not provide for a waiver or reduction of fees and it is not qualified, built or financed under Section 202. The applicant asserts that the rent reductions are authorized by section 1.2 of its by-laws, but this provision only provides the purpose for which the applicant was organized. It states that the applicant is "organized exclusively for the purpose of providing residential facilities and related services to low and moderate income people, to promote community development through planning and conducting neighborhood housing revitalization programs and projects." There is no specific reference in the by-laws of either the applicant or CIS that indicates that the rent will be reduced or waived if the occupant is unable to pay.



In addition, the applicant has not established that CIS is an institution of public charity that would qualify for the exemption under subsection (a) of section 15-65. Two things are necessary in order to qualify for the exemption under this subsection: (1) ownership by a charitable organization, and (2) exclusive use for charitable purposes. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286, 291 (1956). In order to decide whether an organization is charitable and whether the property is actually and exclusively used for charitable purposes, courts consider the following factors:

1. Whether the benefits derived from the property are for an indefinite number of persons;
2. Whether the property benefits the public in such a way as to persuade them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government;
3. Whether the organization has no capital, capital stock or shareholders and earns no profits or dividends;
4. Whether the organization's funds are derived mainly from public and private charity and are held in trust for the objects and purposes expressed in its charter;
5. Whether the organization dispenses charity to all who need and apply for it;
6. Whether the organization does not provide gain or profit in a private sense to any person connected with it;
7. Whether the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it disperses; and
8. Whether the exclusive (primary) use of its property is for charitable purposes.

Methodist Old Peoples Home at 156-57. These factors are not requirements but are guidelines that are considered in assessing an organization's charitable status. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare

Organizations, 274 Ill.App.3d 461, 468 (2<sup>nd</sup> Dist. 1995). The guidelines are not to be applied mechanically or technically, but are to be balanced with an overall focus on whether and how the organization serves the public interest and lessens the State's burdens. Id. at 469.

The applicant has not established that CIS meets these guidelines. The fact that CIS is a not-for-profit corporation and has been granted a letter of exemption under section 501(c)(3) of the Internal Revenue Code is not a basis for exempting the property under section 15-65. See Turnverein 'Lincoln' v. Board of Appeals of Cook County, 358 Ill. 135, 144 (1934); People v. Hopedale Medical Foundation, 46 Ill.2d 450, 464 (1970) (existence of section 501(c)(3) exemption is not determinative of the issue of a charitable property tax exemption). The applicant must present evidence to show that the elements necessary for the exemption have been met.

Although the applicant contends that the rent at Prairie Place is based on the individual's income level, the applicant has not shown that the rent is actually waived for residents who are unable to pay. Without some type of fee-waiver policy, it cannot be found that CIS dispenses charity to all who need and apply for it. See Du Page County Board of Review v. Joint Commission, 274 Ill.App.3d 461, 471 (2<sup>nd</sup> Dist. 1995) (the applicant does not meet this guideline because no one receives the benefit of the applicant's services despite an inability to pay).

Another guideline for deciding whether CIS is a charitable organization is whether it places obstacles in the way of those who need and would avail themselves of its charitable benefits. In analyzing this, the relevant inquiry is whether the organization makes a profit and whether its fees comprise a significant amount of its operating

expenses. See Lena Community Trust Fund, Inc. v. Department of Revenue, 322 Ill.App.3d 884, 889 (2<sup>nd</sup> Dist. 2001). In addition, the statute provides that property that is leased or otherwise used with a view to profit is not exempt. See 35 ILCS 200/15-65. The question of whether the property is being used with a view to profit depends on the intent of the owner. Coles-Cumberland Professional Development Corporation v. Department of Revenue, 284 Ill.App.3d 351, 354 (4<sup>th</sup> Dist. 1996). “[I]f property, however owned, is let for a return, it is used for profit, and, so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.” Turnverein ‘Lincoln’ at 144.

The applicant has not presented enough evidence to assess the financial aspects of the Prairie Place project in order to determine whether these considerations have been met. None of the financial documents concerning Prairie Place or CIS have been submitted. The financial statements would verify the amount of the rental income, the other sources of income, and the use to which the money is put. This information is necessary to determine whether CIS is operating as a charitable organization, whether the primary use of the property is charitable, and whether CIS is operating the property with a view to profit. This information is vital considering the applicant’s ownership interest in the partnership that owns the property.

It is important to remember that the applicant and the limited partnership were created purely for financial purposes in order to fund the Prairie Place project. The applicant’s interest in this project is strictly financial. The burden is on the applicant to prove that the property is not used with a view to profit, and in order to qualify for the exemption under section 15-65(a), the property must be owned by a charitable

organization and used for charitable purposes. See Rogers Park Post No. 108, *supra*. If it is assumed that the applicant has sufficient ownership to have standing to apply for the exemption, then in order to qualify under section 15-65(a), the owner must be a charitable organization. Also, it must be shown that the entire structure is not operated with a view to profit. Without financial information for any of the entities involved, it is impossible to determine this. Based on the evidence that was provided, it cannot be found that the applicant has met its burden of proof.

The applicant's contention that it is entitled to the exemption because the housing authority has a reversionary interest in the property is without merit. Section 15-95 of the Code exempts property owned by housing authorities, but for the year in question, the housing authority does not own the property. The property is owned by Prairie Housing LP, and nothing under the Code allows an exemption for property that is expected to be conveyed to the housing authority in the future.

As a final note, during the hearing the executive director for the housing authority referred to similar housing projects in other counties. She indicated that some housing authorities in other counties have set up similar financial structures with limited partnerships. Those organizations have not applied for property tax exemptions because they have agreements with their counties to pay a portion of their rent in lieu of taxes. (Tr. pp. 26-27). The applicant contends that it was told by the assessor for Menard County that it must apply for and receive the exemption in order to make similar payments in lieu of taxes. (Tr. p. 22) It is unclear from the record why payments would be necessary if the property qualifies for an exemption. Despite any agreements that may be made with the county assessors, however, the applicant must still prove that the

exemption is warranted. The applicant has not presented sufficient facts to support a finding that the property is entitled to an exemption.

Recommendation:

For the foregoing reasons, it is recommended that the Department's determination be upheld, and the property should not be exempt from taxes.

Linda Olivero  
Administrative Law Judge

Enter: October 22, 2004